

FILED

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION

U.S. DISTRICT COURT
N.D. OF ALABAMA

ANTHONY WAYNE DICKEY,)
Plaintiff,)
vs.) CV 98-P-2536-S
STATE OF ALABAMA DEPARTMENT)
OF SOCIAL SECURITY)
ADMINISTRATION,)
Defendants.)

ENTERED

MAR 03 1999

MEMORANDUM OF OPINION

The magistrate judge filed findings and recommendation and supplemental findings and recommendation, recommending that this action filed pursuant to 42 U.S.C. § 1983 be dismissed under 28 U.S.C. § 1915A(b). The plaintiff filed objections to the report and recommendation on February 23, 1999. Plaintiff is apparently under the mistaken impression that his social security disability benefits and supplemental security income disability benefits have been stopped by an agency of the State of Alabama. Plaintiff's benefits were actually stopped by the Social Security Administration, a federal agency. Because the benefits were stopped by a federal agency acting pursuant to federal statute, there is no supremacy clause conflict. Further, the Court of Appeals for the Eleventh Circuit has upheld the constitutionality of 42 U.S.C. § 402(x)(1) finding "no violation of due process, no punishment without trial, and no bill of attainder or *ex post facto* law." *Andujar v. Bowen*, 802 F.2d 404, 405 (11th Cir. 1986).

Having carefully reviewed and considered *de novo* all the materials in the court file, including the report and recommendation and the objections thereto, the Court is of the opinion that the magistrate judge's report is due to be and is hereby ADOPTED and the recommendation is ACCEPTED. Accordingly, plaintiff's objections are due to be overruled and the complaint is due to be dismissed for failing to state a claim upon which relief can be granted pursuant to 28 U.S.C. § 1915A(b). A Final Judgment will be entered.

DATED this 3rd day of March, 1999.


SAM C. POINTER, JR.
CHIEF UNITED STATES DISTRICT JUDGE